

FOGNANI & FAUGHT, PLLC  
*Attorneys at Law*

**RECEIVED**  
**AUG 15 2012**  
**ECEJ**

August 15, 2012

**Via Certified Mail-Return Receipt Requested**

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
(DJ # 90-11-3-08764)  
P.O. Box 7611  
Washington, D.C. 20044-7611

**Via Hand Delivery**

Margaret (Peggy) J. Livingston  
Senior Enforcement Attorney  
1595 Wynkoop Street (8-ENFL)  
Denver, Colorado 80202-1129

**Via Hand Delivery**

Maureen O'Reilly  
EPA Enforcement Specialist  
Richardson Flat Superfund Site  
U.S. Environmental Protection Agency, Region 8  
1595 Wynkoop Street (8ENF-RC)  
Denver, Colorado 80202-1129

**Re: Notice of Suit or Claim Pursuant to Partial Consent Decree Lodged on  
September 5, 2006**

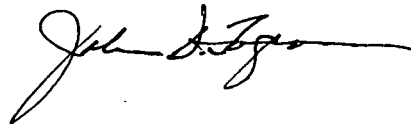
Dear Ladies and Gentlemen:

In accordance with Paragraph 22 of the above-referenced Partial Consent Decree, and on behalf of Xstrata PLC ("Xstrata"), a UK corporation, I am hereby providing notice that a suit or claim for contribution has been brought by ASARCO LLC ("Asarco"), a Delaware corporation, by filing a Complaint against Xstrata. For your information and clarification, Xstrata is the ultimate parent company of Noranda Mining Inc. ("Noranda") and Falconbridge Limited ("Falconbridge"), the parties to the relevant Partial Consent Decree. As Xstrata is not a successor-in-interest to those companies we consider the claim misguided. Nevertheless, it is possible that the correct entity or entities may be substituted in due course and survive legal challenge and as such Xstrata is hereby providing notice of the filing of a suit or claim for contribution, in accordance with paragraph 22 of the Partial Consent Decree and within the requisite 14-day time period from the date of service of Asarco's Complaint. The Complaint filed by Asarco was served on Xstrata on Friday, August 3, 2012, assuming service of process was effective.

Chief, Environmental Enforcement Section  
Margaret (Peggy) J. Livingston, EPA Senior Enforcement Attorney  
Maureen O'Reilly, EPA Enforcement Specialist  
August 15, 2012  
Page 2

For your convenience, we have attached to this Notice a copy of the Partial Consent Decree and the Asarco Complaint. We look forward to your thoughts and comments and to a further discussion of Xstrata's rights and obligations under the Partial Consent Decree given the filing of the Complaint by Asarco. Of course, if you have any questions or comments, please do not hesitate to contact me on behalf of Xstrata.

Very tmly yours,

A handwritten signature in black ink, appearing to read "John D. Fognani", with a long horizontal flourish extending to the right.

John D. Fognani  
of FOGNANI & FAUGHT, PLLC

JDF:klw  
Enclosures  
cc w/encls.: Matthew Payten, Xstrata Copper Canada  
Kendall R. McLaughlin, Esq.

File  
JDF

BRETT L. TOLMAN (#8821), United States Attorney  
DANIEL D. PRICE (#2646), Assistant United States Attorney  
185 South State Street, Suite 400  
Salt Lake City, UT 84111  
(801) 325-3234 (PHONE)  
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daniel.price2@usdoj.gov

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

SEP 05 2006

BY MARKUS B. ZIMMER, CLERK  
DEPUTY CLERK

MARK C. ELMER (*Pro hac vice*)  
Trial Attorney, Environmental Enforcement Section  
United States Department of Justice  
1961 Stout Street, 8<sup>th</sup> Floor  
Denver, CO 80294  
(303) 844-1352 (PHONE)  
(303) 844-1350 (FAX)  
mark.elmer@usdoj.gov

*Attorneys for the United States of America*IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

*Plaintiff,*

vs.

UNITED PARK CITY MINES COMPANY,  
ATLANTIC RICHFIELD COMPANY,  
FALCONBRIDGE LIMITED, and  
NORANDA MINING INC.,*Defendants.*

Case No.

NOTICE OF LODGING OF  
PROPOSED PARTIAL  
CONSENT DECREE  
(FALCONBRIDGE LIMITED  
AND NORANDA MINING INC.)Judge Paul G. Cassell  
DECK TYPE: Civil  
DATE STAMP: 09/05/2006 @ 15:07:50  
CASE NUMBER: 2:06CV00745 PGC

The United States has filed a Complaint pursuant to Section 107(a) of the Comprehensive  
Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §

USDC  
EPA

9607(a), for reimbursement of response costs incurred by the United States in connection with the Richardson Flat Tailings Site ("Site"), located approximately 1.5 miles northeast of Park City, Utah.

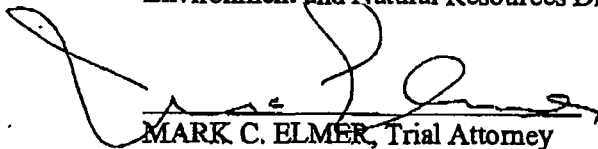
By way of this Notice, the United States notifies the Court that the United States has lodged a proposed Partial Consent Decree in this matter (the "Decree"). The Decree, which is attached as Exhibit A, would resolve the United States' claims against Defendants Falconbridge Limited and Noranda Mining Inc. for past response costs relating to the Site. The ultimate entry of the Decree would end this litigation as to these Defendants.

The Court should not sign the Decree at this time. Instead, the Decree should remain lodged with the Court while the United States provides an opportunity for public comment in accordance with CERCLA Section 122(d)(2), 42 U.S.C. § 9622(d)(2), and the policy of the Department of Justice, 28 C.F.R. Part 50.7.

The Department of Justice will publish in the Federal Register a notice that the Decree has been lodged with the Court. The Notice will solicit public comment for a period of 30 days. During the comment period, no action is required by the Court.

Respectfully submitted,

SUE ELLEN WOOLDRIDGE  
Assistant Attorney General  
Environment and Natural Resources Division



MARK C. ELMER, Trial Attorney  
Environmental Enforcement Section  
U.S. Department of Justice  
1961 Stout Street, 8<sup>th</sup> Floor  
Denver, CO 80294  
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BRETT L. TOLMAN  
United States Attorney  
District of Utah



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OF COUNSEL:

MARGARET ("PEGGY") J. LIVINGSTON  
Senior Enforcement Attorney  
U.S. Environmental Protection Agency, Region 8  
999 Eighteenth Street, Suite 300 (8-ENFL)  
Denver, CO 80202-2466

*Attorneys for the United States*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

File  
JDF

-----X  
UNITED STATES OF AMERICA,

*Plaintiff,*

Civil Action No.

UNITED PARK CITY MINES COMPANY;  
ATLANTIC RICHFIELD COMPANY;  
FALCONBRIDGE LIMITED; and  
NORANDA MINING INC.

*Defendants.*  
-----X

PARTIAL CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of costs incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Richardson Flat Tailings Site located approximately 1.5 miles northeast of Park City, Utah ("the Site").

B. The Defendants that have entered into this Consent Decree (Falconbridge Limited and Noranda Mining Inc. or "Settling Defendant") do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

C. By entering into this Consent Decree, the mutual objective of the Parties is to resolve the claims of the United States against Settling Defendants for Past Response Costs, subject to reservations of rights in Paragraph 14, by allowing Settling Defendants to make a cash payment as described herein.

D. The United States and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

Exhibit A

**THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:**

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## **III. PARTIES BOUND**

2. This Consent Decree is binding upon the United States and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Decree.

## **IV. DEFINITIONS**

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

b. "Consent Decree" shall mean this Consent Decree.

c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

g. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

h. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

i. "Parties" shall mean the United States and Settling Defendants.

j. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or DOJ on behalf of EPA has paid at or in connection with the Site through March 1, 2006, plus accrued Interest on all such costs through such date.

k. "Plaintiff" shall mean the United States.

l. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

m. "Settling Defendants" shall mean Falconbridge Limited and Noranda Mining Inc., and their respective successors and assigns.

n. "Site" shall mean the Richardson Flat Tailings Site, CERCLIS ID # UTD980952840, which is located approximately 1.5 miles northeast of Park City, Utah and is part of a 650-acre property owned by United Park City Mines Company ("UPCM"). The Site is the location of a mine tailings impoundment that covers approximately 160 acres in the northwest corner of UPCM's property and includes diversion ditches, wetlands and other features. The Site is depicted generally on the map attached as Appendix A.

o. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

#### V. PAYMENT OF RESPONSE COSTS

4. Payment of Past Response Costs to EPA. Within five business days after Settling Defendants receive notice from the United States that this Consent Decree has been lodged, Settling Defendants shall deposit \$60,000 into an escrow account bearing interest on commercially reasonable terms, in a federally-chartered bank (the "Escrow Account"). If the Consent Decree is not entered by the Court, and the time for any appeal of that decision has run or if the Court's denial of entry is upheld on appeal, the monies placed in escrow, together with accrued interest thereon, shall be returned to Settling Defendants. If the Consent Decree is



entered by the Court, Settling Defendants shall, within 15 days thereof, cause the monies in the Escrow Account to be paid to EPA in accordance with Paragraphs 5 and 6 below.

5. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with EFT instructions provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the District of Utah following lodging of the Consent Decree.

6. At the time of payment, Settling Defendants shall also send notice that payment has been made to EPA and DOJ in accordance with Section XIII (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill Identification Number 0894, DOJ case number 90-11-3-08764, and the civil action number.

7. The total amount to be paid pursuant to Paragraph 4 shall be deposited in the EPA Hazardous Substance Superfund.

#### **VI. FAILURE TO COMPLY WITH CONSENT DECREE**

8. Interest on Late Payments. If Settling Defendants fail to make any payment under Paragraph 4 (Payment of Response Costs) by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

9. Stipulated Penalty.

a. If any amounts due under Paragraph 4 are not paid by the required date, Settling Defendants shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 8, \$250 per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name, the EPA Region and Site Spill ID Number 0894, DOJ Case Number 90-11-3-08764, and the civil action number. Settling Defendants shall send the check (and any accompanying letter) to:

Regular Mail: Mellon Bank  
EPA Region 8  
Attn: Superfund Accounting  
Lockbox 360859  
Pittsburgh, Pennsylvania 15251-6859

Express Mail: EPA 360859  
Mellon Client Service Center, Room 670  
500 Ross Street  
Pittsburgh, Pennsylvania 15262-0001

or to such other address as EPA may designate in writing.

c. At the time of each payment, Settling Defendants shall also send notice that payment has been made to EPA and DOJ in accordance with Section XIII (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill ID Number 0894, DOJ Case Number 90-11-3-08764, and the civil action number.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

10. If the United States brings an action to enforce this Consent Decree, Settling Defendants shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

11. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

12. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section V or from performance of any other requirements of this Consent Decree.

## **VII. COVENANT NOT TO SUE BY PLAINTIFF**

13. Covenant Not to Sue by United States. Except as specifically provided in Section VIII (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendants or their respective officers, directors, or employees (to the extent that the liability of such officers, directors, or employees arises solely from their legal status as officers, directors, or employees) pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. This covenant not to sue shall take effect upon receipt by EPA of all payments required by Section V, Paragraph 4 (Payment of Response Costs) and any amount due under Section VI (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants of

their obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendants (and their respective officers, directors, and employees to the extent that the liability of such officers, directors, or employees arises solely from their legal status as officers, directors, or employees) and does not extend to any other person.

#### **VIII. RESERVATIONS OF RIGHTS BY UNITED STATES**

14. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within the Covenant Not to Sue by Plaintiff in Paragraph 13. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

- a. liability for failure of Settling Defendants to meet a requirement of this Consent Decree;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

#### **IX. COVENANT NOT TO SUE BY SETTLING DEFENDANTS**

15. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past Response Costs or this Consent Decree, including but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of the response actions at the Site for which the Past Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of Utah, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs.

16. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

17. Settling Defendants agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Settling Defendants with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

18. The waiver in Paragraph 17 shall not apply with respect to any defense, claim, or cause of action that Settling Defendants may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against such Settling Defendants. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of the Solid Waste Disposal Act (also known as the Resource Conservation and Recovery Act or "RCRA"), 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

#### **X. RESERVATION OF RIGHTS BY SETTLING DEFENDANTS**

19. Settling Defendants reserve, and this Consent Decree is without prejudice to, all rights against the United States with respect to all matters not expressly included within the Settling Defendants' Covenant Not to Sue in Paragraph 15.

#### **XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

20. Except as provided in Paragraph 17, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Paragraph 17, the Parties expressly reserve any and all rights

(including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

21. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants are entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are Past Response Costs.

22. Settling Defendants agree that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no later than 30 days prior to the initiation of such suit or claim. Settling Defendants also agree that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 14 days of service of the complaint or claim upon it. In addition, Settling Defendants shall notify EPA and DOJ within 14 days of service or receipt of any Motion for Summary Judgment, and within 14 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

23. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section VII.

#### **XII. RETENTION OF RECORDS**

24. Until 10 years after the entry of this Consent Decree, Settling Defendants shall preserve and retain all records, reports, or information (hereinafter referred to as "records") now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

25. After the conclusion of the 10-year document retention period in the preceding paragraph, Settling Defendants shall notify EPA and DOJ at least 90 days prior to the destruction of any such records, and, upon request by EPA or DOJ, Settling Defendants shall deliver any such records to EPA. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (e.g., company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the

subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendants shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

26. Settling Defendants each hereby certify that, to the best of their knowledge and belief, after thorough inquiry, they have not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to their potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against them regarding the Site and that they have fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6972.

### **XIII. NOTICES AND SUBMISSIONS**

27. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendant, respectively.

#### **As to the United States:**

##### **As to DOJ:**

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice (DJ # 90-11-3-08764)  
P.O. Box 7611  
Washington, D.C. 20044-7611

##### **As to EPA:**

Margaret (Peggy) J. Livingston  
Senior Enforcement Attorney  
U.S. Environmental Protection Agency, Region 8  
999 Eighteenth Street, Suite 300 (8-ENFL)  
Denver, CO 80202-2466

Maureen O'Reilly  
EPA Enforcement Specialist  
Richardson Flat Superfund Site  
U.S. Environmental Protection Agency, Region 8  
999 Eighteenth Street, Suite 300 (8ENF-RC)  
Denver, CO 80202-2466

As to Settling Defendants:

David Hart  
Vice President — Reclamation  
Noranda Mining Inc.  
c/o Noranda Aluminum  
P.O. Box 70  
New Madrid, MO 63869

With a copy to:

John D. Fognani  
Fognani & Faught, PLLC  
1700 Lincoln Street, Suite 2222  
Denver, CO 80203

**XIV. RETENTION OF JURISDICTION**

28. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

**XV. INTEGRATION/APPENDICES**

29. This Consent Decree and its appendix constitute the final, complete and exclusive agreement and understanding of Defendant with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendix is attached to and incorporated into this Consent Decree: "Appendix A" is the map of the Site.

**XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

30. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants

consent to the entry of this Consent Decree without further notice.

31. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of either party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

#### **XVII. SIGNATORIES/SERVICE**

32. The Deputy Section Chief, Environmental Enforcement Section of the United States Department of Justice, and each undersigned representative of a Settling Defendant to this Consent Decree certify that they are authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

33. Settling Defendants hereby agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

34. Settling Defendants shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that Settling Defendants need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

#### **XVIII. FINAL JUDGMENT**

35. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between the United States and Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2006.

\_\_\_\_\_  
United States District Judge




THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. United Park City Mines Co., et al., relating to the Richardson Flat Tailings Site.

FOR THE UNITED STATES OF AMERICA:

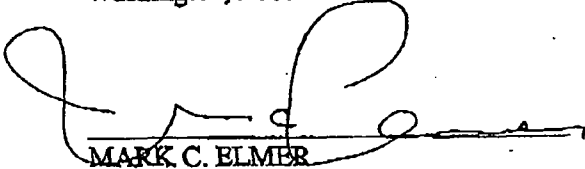
UNITED STATES DEPARTMENT OF JUSTICE

SUE ELLEN WOOLDRIDGE  
Assistant Attorney General  
Environment and Natural Resources Division

Date: 7/25/06

  
W. BENJAMIN FISHEROW  
Deputy Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

Date: 8/18/06

  
MARK C. ELMER  
Trial Attorney  
U.S. Department of Justice  
Environmental Enforcement Section  
1961 Stout Street, 8<sup>th</sup> Floor  
Denver, CO 80294  
(303) 844-1352 (PHONE)  
(303) 844-1350 (FAX)

**UNITED STATES ATTORNEY'S OFFICE  
FOR THE DISTRICT OF UTAH**

**BRETT L. TOLMAN**  
United States Attorney  
District of Utah

Date:

Sept. 5, 2006

Daniel D. Price

**DANIEL D. PRICE**  
Assistant United States Attorney  
District of Utah  
185 South State Street, Suite 400  
Salt Lake City, UT 84111

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 8/10/2006

Carol Rushin

CAROL RUSHIN

Assistant Regional Administrator, Region 8

Office of Enforcement, Compliance and Environmental Justice

U.S. Environmental Protection Agency

999 Eighteenth Street, Suite 300

Denver, CO 80202

Date: July 21, 2006

Margaret J. (Peggy) Livingston

MARGARET J. (PEGGY) LIVINGSTON

Senior Enforcement Attorney

U.S. Environmental Protection Agency, Region 8


999 Eighteenth Street, Suite 300 (8-ENFL)

Denver, CO 80202

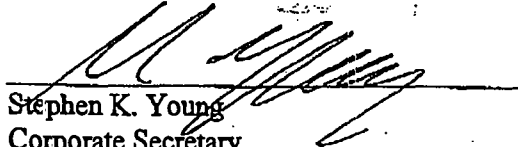
THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. United Park City Mines Co., et al., relating to the Richardson Flat Tailings Site.

FOR DEFENDANT FALCONBRIDGE LIMITED

Date: July 6, 2006

  
Jeffery A. Snow  
Senior Vice President and General Counsel  
Falconbridge Limited

Date: July 6, 2006

  
Stephen K. Young  
Corporate Secretary  
Falconbridge Limited

Agent Authorized to Accept Service on Behalf of Above-signed Party:

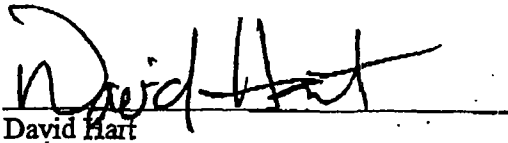
John D. Fognani  
Fognani & Fought, PLLC  
1700 Lincoln Street, Suite 2222  
Denver, CO 80203

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. United Park City Mines Co., et al., relating to the Richardson Flat Tailings Site.

FOR DEFENDANT NORANDA MINING INC.

Date:

07/06/06



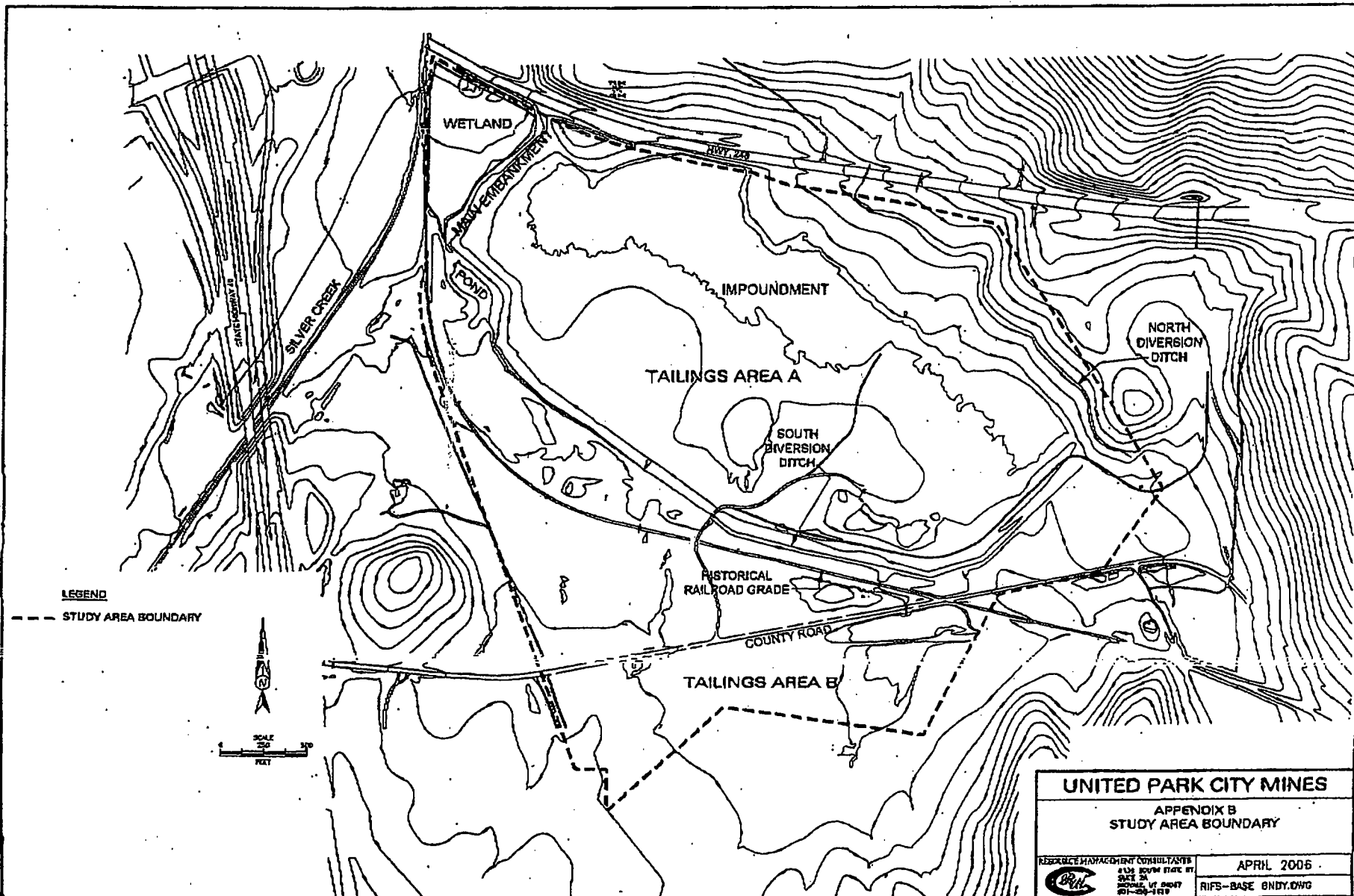
David Hart

Director and Vice President — Reclamation  
Noranda Mining Inc.

Agent Authorized to Accept Service on Behalf of Above-signed Party:

John D. Fognani  
Fognani & Faught, PLLC  
1700 Lincoln Street, Suite 2222  
Denver, CO 80203

# Appendix A



## SUMMARY OF THE DOCUMENT TO BE SERVED

Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, signed at The Hague, the 15th of November 1965.

(Article 5, fourth paragraph)

SFP-2012-9784

**Name and address of the requesting authority:**

James A. Holtkamp  
Holland & Hart LLP  
222 South Main Street, Suite 2200  
Salt Lake City, Utah 84101  
USA

ZUZUSTERIEN - TO BE SERVED  
à signifier-da notificara

**Particulars of the parties\*:**

Asarco LLC, a Delaware corporation (Plaintiff)

vs.

Xstrata PLC (Defendant)

Registered Office, 4th Floor, Pantton House, 25/27 Haymarket, London SW1Y 4EN, England

### JUDICIAL DOCUMENT\*\*

**Nature and purpose of the document:**

To give notice to the defendant of the commencement of a claim for monetary damages against it, and to summon it to serve written defenses to the claim.

**Nature and purpose of the proceedings and, where appropriate, the amount in dispute:**

Civil claim for monetary damages. Plaintiff seeks to have a judgment entered against defendant in a just and equitable way to be determined by the Court of original jurisdiction.

**Date and place for entering appearance\*\*:**

Not applicable (N/A)

**Court which has given judgment\*\*:**

Not applicable (N/A)

**Date of judgment\*\*:**

Not applicable (N/A)

**Time-limits stated in the document\*\*:**

Defendant is to serve written defenses to the action on Plaintiff's attorney within 30 calendar days after receiving the documents

### EXTRAJUDICIAL DOCUMENT\*\*

**Nature and purpose of the document:** Not applicable (N/A)

**Time-limits stated in the document\*\*:** Not applicable (N/A)

\* If appropriate, identity and address of the person interested in the transmission of the document

\*\* Delete if inappropriate.

AO 440 (Rev. 04/08) Civil Summons

# UNITED STATES DISTRICT COURT

for the  
District of Utah

ASARCO LLC, a Delaware corporation

Plaintiff

v.

XSTRATA PLC, a UK corporation,

Defendant

Civil Action No. 2:12-cv-00527-EJF

## Summons in a Civil Action

To: (Defendant's name and address)

XSTRATA PLC, a UK corporation

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, whose name and address are:

Gregory Evans

William R. Pletcher

Integer Law Corporation

811 W. 7th Street, 12th Floor, Los Angeles, CA 90017

James A. Holtkamp

Holland & Hart LLP

222 South Main Street, Suite 2200

Salt Lake City, UT 84101

If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: 07/02/2012



D. Mark Jones

Name of clerk of court

Deputy clerk's signature

(Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States allowed 60 days by Rule 12(a)(3).)



AO 440 (Rev. 04/08) Civil Summons (Page 2)

Proof of Service

I declare under penalty of perjury that I served the summons and complaint in this case on \_\_\_\_\_,  
by:

(1) personally delivering a copy of each to the individual at this place, \_\_\_\_\_; or

(2) leaving a copy of each at the individual's dwelling or usual place of abode with \_\_\_\_\_  
who resides there and is of suitable age and discretion; or

(3) delivering a copy of each to an agent authorized by appointment or by law to receive it whose name is  
\_\_\_\_\_; or

(4) returning the summons unexecuted to the court clerk on \_\_\_\_\_; or

(5) other (specify) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

Date: \_\_\_\_\_

\_\_\_\_\_  
Server's signature

\_\_\_\_\_  
Printed name and title

\_\_\_\_\_  
Server's address

Gregory Evans (California SBN 147623)  
*Pro Hoc Vice Application Pending*  
William R. Pletcher (California SBN 212664)  
*Pro Hoc Vice Application Pending*  
Tanya Guerrero (New York SBN 4602553)  
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Attorneys for Plaintiff Asarco LLC

UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

ASARCO LLC, a Delaware corporation,  
Plaintiff,

v.

XSTRATA PLC, a UK corporation,  
Defendant.

COMPLAINT

Case No.: 2:12-cv-00527-EJF

Magistrate Judge Evelyn J. Furse

JURY TRIAL DEMANDED

ASARCO LLC ("Asarco") complains of Defendant and alleges:

### **NATURE OF THE ACTION**

1. This is a civil action brought by Asarco pursuant to CERCLA for contribution against Defendant for costs incurred by Asarco at the Richardson Flats/Park City Mining District ("the Site") in Summit County, Utah. Asarco has recently paid \$8,850,000 to settle all of its CERCLA-related liability at the Site. This settlement included costs to cleanup and control contamination that cannot be associated with Asarco's historic mining activities, but can only have come from the Defendant's facilities.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over the subject matter of this action, and this Defendant, pursuant to 28 U.S.C. §§ 1331 and 1367(a), and Section 113 of CERCLA, 42 U.S.C. § 9613.

3. Venue is proper in this judicial district pursuant to 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b) because the claims arose, and the threatened and/or actual releases of hazardous substances occurred within the District of Utah, Central Division.

### **PLAINTIFF**

4. Asarco is a limited liability company organized under the laws of the state of Delaware. Asarco has taken responsibility for the cleanup of all of its known liabilities for any "releases" under CERCLA Section 107(a), *et seq.*, 42 U.S.C. § 9607(a), *et seq.*, for Asarco's historic mining operations at the Site, and Asarco has settled all of its liability at the Site with the United States.

### **DEFENDANT**

5. Xstrata PLC ("Xstrata") is a UK corporation that has owned or operated mining operations involving and discharging hazardous substances in facilities in and near the Site. Xstrata operates a mining facility in Summit County, Utah. Xstrata is successor-in-interest to

Noranda Mining Company ("Noranda"). Xstrata acquired Falconbridge Limited in 2006, which merged with Noranda in 2005. Noranda operated mining operations in Summit County, Utah which discharged hazardous substances in and near the Site. Xstrata is an "owner" and/or "operator" of a "facility" pursuant to Sections 101(9) and (20) and 107(a)(2) of CERCLA, 42 U.S.C. §§ 9601(9) and (20) and 9607(a)(1) and (2).

#### **SITE DESCRIPTION AND FACTUAL BACKGROUND**

6. The Richardson Flats/Park City Mining District ("Richardson Flats") site (the "Site") comprises several areas. The Richardson Flats Tailings Impoundment is located 1.5 miles northeast of Park City, Utah, and is part of a 650-acre property owned by the United Park City Mines Company ("UPCM"). The tailings impoundment covers approximately 160 acres in the northwest corner of the UPCM property in the Upper Silver Creek Watershed. The tailings impoundment is listed in the United States Environmental Protection Agency Comprehensive Environmental Response, Compensation, and Liability Information System ("CERCLIS"). The site identification number for the tailings impoundment is UT980952840.

7. In addition to the tailings impoundment, the Site includes the Ontario #3 mine, the Keetley Drain Tunnel, portions of the Lower Silver Creek Area, a slurry line, and other associated mine workings.

8. Defendant Xstrata, and its predecessor companies, owned and operated and/or continues to own and operate a facility in the vicinity of the Site and these operations have released and contributed lead and/or arsenic to the environment at the Site.

9. On August 9, 2005, Asarco filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code in the Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court").

10. On September 23, 2008, Asarco filed a motion in the Bankruptcy Court for approval of a settlement pursuant to CERCLA whereby Asarco would pay environmental regulators \$8,850,000 to resolve its CERCLA liabilities at the Site ("Richardson Flats Site Settlement"). The Richardson Flats Site Settlement was approved by the Bankruptcy Court and United States District Court. The Richardson Flats Site Settlement was to be funded upon court approval of a plan of reorganization.

11. On November 13, 2009, Asarco's Plan of Reorganization, under which Asarco would make full payment on its environmental claims as approved by the Bankruptcy Court, was approved by the District Court for the Southern District of Texas.

12. On December 9, 2009, Asarco's Plan of Reorganization became effective, enabling disbursement of funds for environmental settlements, including funds for the Richardson Flats Site Settlement. Asarco fully funded the Richardson Flats Site Settlement at one hundred cents on the dollar as part of its reorganization. Thus, the Richardson Flats Site Settlement constitutes a judicially approved settlement which stems from enforcement action taken pursuant to Section 106 or Section 107 of CERCLA.

13. The Richardson Flats Site Settlement funds a cleanup at the Richardson Flats Site that addresses fully all of the Asarco waste, as well as other harmful substances governed under CERCLA and released by Defendant during its ownership or operation of facilities at the Richardson Flats Site or near or adjacent to the Richardson Flats Site.

**COUNT I**  
**CLAIM FOR CONTRIBUTION UNDER SECTION 113(I) OF CERCLA**

14. Plaintiff incorporates by reference paragraphs 1 through 13 as if fully set forth herein.

15. The Richardson Flats Site and surrounding areas, are "facilities" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

16. "Hazardous substances," within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), were disposed of, placed, released, or otherwise became located in the Richardson Flats Site at times relevant to this action by Defendant.

17. Defendant is responsible for disposals or "releases" within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22) into the environment at or from the Richardson Flats Site at times relevant to this action.

18. Defendant is liable under Section 107(a) of CERCLA because it owned or operated a facility at which such hazardous substances were disposed. 42 U.S.C. § 9607(a)(2).

19. Defendant is liable under Section 107(a) of CERCLA if the person arranged, by contract or otherwise, with a transporter for transport or disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances. 42 U.S.C. § 9607(a)(3).

20. Defendant is liable under Section 107(a) of CERCLA if the person accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs. 42 U.S.C. § 9607(a)(4).

21. Defendant is a person who is liable for owning and/or operating facilities at or from which hazardous substances were disposed under 42 U.S.C. § 9607(a)(2), for arranging transport or disposal of hazardous substances under 42 U.S.C. § 9607(a)(3), and/or transporting hazardous substances in or near the Site, under 42 U.S.C. § 9607(a)(4).

22. Asarco has resolved CERCLA liability for response action with the United States through the judicially approved bankruptcy reorganization and may seek contribution pursuant to Section 113(f) of CERCLA, 42 U.S.C. § 9613(f).

23. To date, Asarco has incurred approximately \$8,850,000 for response action consistent with the NCP pursuant to 42 U.S.C. § 9607(a)(4)(B). This amount represents more than Plaintiff's allocable share of costs related to its releases or disposal of hazardous substances in the Richardson Flats Site.

24. Because Defendant qualifies as responsible party under CERCLA § 107(a), Defendant is liable under Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), for its equitable share in contribution to Asarco's Richardson Flats Site Settlement.

25. WHEREFORE, Plaintiff respectfully requests that judgment be entered in its favor and against Defendant:

- Ordering Defendant to pay contribution to Plaintiff in a sum to be determined by the Court to be owed to Plaintiff for response costs;
- Awarding Plaintiff its costs and attorneys' fees; and
- Awarding Plaintiff all other relief that the Court deems appropriate.

Respectfully submitted,

Dated: June 5, 2012

By: /s/ James A. Holtkamp  
Gregory Evans (California SBN 147623)  
*Pro Hac Vice Application Pending*  
William R. Pletcher (California SBN 212664)  
*Pro Hac Vice Application Pending*  
Tanya Guerrero (New York SBN 4602553)  
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Attorneys for Plaintiff Asarco LLC